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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/829,485	04/22/2004	Robert R. Mantell	7034/110	6956
757 7590 07/21/2008 BRINKS HOFER GILSON & LIONE P.O. BOX 10395 CHICAGO, IL 60610				
EXAMINER				
MENDEZ, MANUEL A				
ART UNIT		PAPER NUMBER		
3763				
MAIL DATE		DELIVERY MODE		
07/21/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/829,485

**Applicant(s)**

MANTELL, ROBERT R.

**Examiner**

Manuel A. Mendez

**Art Unit**

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 April 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/ICE)  
Paper No(s)/Mail Date 09/09/2004 and 04/25/2005
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

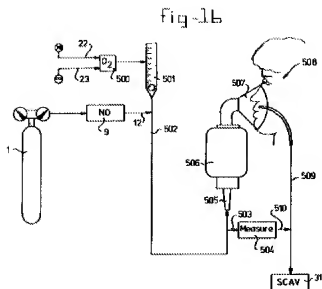
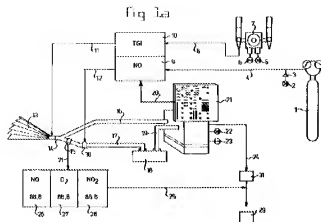
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

**Claims 1-4 and 9-11** are rejected under 35 U.S.C. 102(b) as being anticipated by **Lugtigheid et al.**



The cited patent shows in figure 1b, a gas supply providing at least two sources of gas and a mixer system having a chamber and two inlets and one outlet wherein the two inlets of the chamber are in fluid communication with the gas supply and the chamber.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 5, 6, and 7** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Lutigheid et al. (US 6,158,434)** in view of **Kirk (US 6,123,075)**. The Lutigheid et al. patent does not disclose the use of baffles or holes in the chamber. However, such enhancements would have been considered conventional in the art as evidenced by the teachings of Kirk. The Kirk patent demonstrates that chamber designs having baffles or holes are well known in the art. Accordingly, for a person of ordinary skill in the art, modifying the chamber disclosed by Lutigheid et al., with baffles and holes, as taught by Kirk would have been considered obvious in view of the proven conventionality of these enhancements.

**Claim 8** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Lutigheid et al. (US 6,158,434)** in view of **Garrison et al. (US 6,645,197)**. The Lutigheid et al. patent does not disclose the use of a fan in the mixing chamber. However, such enhancement would have been considered conventional in the art as evidenced by the teachings of Garrison et al. The Garrison et al. patent demonstrates that the use a fan in mixing chambers is well known in the art. Accordingly, for a person of ordinary skill in the art, modifying the chamber disclosed by Lutigheid et al., with a

fan, as taught by **Garrison et al.** would have been considered obvious in view of the proven conventionality of this enhancement.

**Claims 12 and 13** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Lutigheid et al. (US 6,158,434)** in view of **Ott et al. (US 7,250,035)**. The Lutigheid et al. patent does not disclose the use of a resistor block to measure resistance in order to analyze gas. However, such enhancement would have been considered conventional in the art as evidenced by the teachings of Ott et al. The Ott et al. patent demonstrates that the use of sensors that comprise of resistors is well known in the art. Accordingly, for a person of ordinary skill in the art, modifying the chamber disclosed by Lutigheid et al., with a sensor resistor, as taught by Ott et al., would have been considered obvious in view of the proven conventionality of this enhancement.

**Claim 17** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Lutigheid et al. (US 6,158,434)** in view of **Milewicz (US 6,010,118)**. The Lutigheid et al. patent does not disclose the use of a humidification system in combination with the mixing chamber. However, such enhancement would have been considered conventional in the art as evidenced by the teachings of **Milewicz**. The Milewicz patent demonstrates that the use of a humidifier in combination with any gas supply apparatus is well known in the art. Accordingly, for a person of ordinary skill in the art, modifying gas supply apparatus disclosed by Lutigheid et al., with a humidifier, as taught by Milewicz, would have been considered obvious in view of the proven conventionality of this enhancement.

**Claims 14, 15, 16, and 18** are is rejected under 35 U.S.C. 103(a) as being unpatentable over **Lugtigheid et al. (US 6,158,434)** in view of **Ranford (US 5,279,549)**. The Lugtigheid et al. patent does not disclose the use of a dual capacity or multi-lumen catheter and a design wherein there are two delivery paths including two delivery paths. However, in relation to the use of dual lumen catheter, such enhancement would have been considered conventional in the art as evidenced by the teachings of Ranford. The Ranford patent demonstrates that the use of a dual-lumen catheter in a gas supply apparatus is well known in the art. Accordingly, for a person of ordinary skill in the art, modifying gas supply apparatus disclosed by Lugtigheid et al., with a dual lumen catheter, as taught by Ranford, would have been considered obvious in view of the proven conventionality of this enhancement.

Finally, concerning the two delivery paths and multi-output capability, the examiner notes for the record that the addition of another path, whether an input or an output line, is considered the duplication of a well known element and according to the law, should not be provided patentable weight since the duplication is considered an obvious design alternative.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Manuel A. Mendez whose telephone number is 571-272-4962. The examiner can normally be reached on 0730-1800 hrs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Nicholas D. Lucchesi can be reached on 571-272-4977. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Manuel A. Mendez/

Primary Examiner, Art Unit 3763

Manuel A. Mendez  
Primary Examiner  
Art Unit 3763

MM